

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 225

Criminal Revision No.199 of 2011 (O&M)
Date of Decision: May 24, 2023

Dinesh Ahluwalia

..... PETITIONER(S)

VERSUS

Roopa Ahluwalia

..... RESPONDENT(S)

. . .

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

. . .

PRESENT: - Mr. Rohit Nagpal, Advocate with Mr. Yugank Goyal,
Advocate for the petitioner/non-applicant.

None for the respondent/applicant.

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Tribhuvan Dahiya, J (Oral)

This petition has been filed for setting aside the judgment dated 02.12.2010 passed by the Family Court, Gurugram, granting maintenance of ₹40,000 per month to the respondent-wife.

2. Briefly, the facts of the case are, marriage between the parties was solemnized on 28.02.1992; two children were born out of the wedlock, a son and a daughter. Both are stated to be with the petitioner-husband. He was granted *ex-parte* decree of divorce on 24.03.2005, which was set-aside on 17.03.2008. Later, the respondent-wife filed a petition under Section 125 Cr.P.C. claiming maintenance. Against setting aside of the *ex-parte* decree of divorce, the petitioner has filed an appeal in the Delhi High Court, which is still pending adjudication.

3. A perusal of the impugned order establishes that both, the petitioner as well as the respondent, were employed at the time of passing of the impugned judgment granting maintenance to the respondent. The petitioner was working as a commercial pilot in Air India, and earning

approximately ₹5 lakh per month; the respondent-wife was working as air hostess in same airlines, and was earning approximately ₹1 lakh per month. Considering income of the parties, as also the fact that the respondent-wife is entitled to maintain the same standard of living as she was entitled to while living with the petitioner, an amount of ₹40,000 per month was awarded as maintenance.

4. While issuing notice of motion on 23.07.2012, this Court directed the petitioner to deposit entire arrears of maintenance awarded by the Family Court, at the rate of ₹30,000 per month instead of ₹40,000 within one month.

5. Learned counsel appearing for the petitioner submits that the interim order was duly complied with, and from that day onwards the petitioner has been regularly paying maintenance to the respondent at the rate of ₹30,000 per month. He is not in arrears as on date. It is also submitted that before setting aside of the *ex-parte* decree of divorce granted to the petitioner, he re-married and has a child out of the second wedlock. Accordingly, he is taking care of three children (two from the previous marriage with the respondent, and one from the second marriage) as well as of his parents. Keeping in view his liabilities, the amount of maintenance granted to the respondent is on a higher side and should be reduced.

6. Learned counsel for the petitioner has informed that during pendency of the petition, the petitioner has retired from service of the airlines on 31.07.2021. Although he keeps getting periodical contracts to train pilots, the same are not too many. It has fairly been submitted by the learned counsel that, as per instructions, the respondent-wife has also retired from service.

7. The submissions made by learned counsel for the petitioner have been considered.

8. The petitioner was earning approximately ₹5 lakhs per month at the time of passing of the order granting maintenance in 2010, and the respondent was also earning approximately ₹1 lakh per month. The monthly maintenance of ₹40,000 granted by the Family Court is by taking into account income of the parties as well as the status that respondent-wife is entitled to maintain being legally wedded wife of the petitioner, and cannot be termed to be on a higher side.

9. The stated liability of the petitioner to look after his children and parents does not entitle him to dispute the amount of maintenance granted. Firstly, it is only for the respondent-wife that the maintenance has been granted and not for the children. Secondly, so far as taking care of the second wife and the child born out of the wedlock is concerned, that also cannot afford a ground since validity of the second marriage is itself in question. The *ex-parte* decree of divorce granted to the petitioner has already been set aside. Further, taking care of the parents is no ground to seek reduction of the amount of maintenance, since they cannot be considered a liability and the petitioner is bound to look after them irrespective of his obligation towards wife and children.

10. Lastly, to consider the subsequent developments, both the parties have statedly retired from service. The petitioner, though retired has some contractual engagements to train pilots, and he is still earning. However, there is nothing on record to establish that the respondent has any income after retirement. At the same time, she remains legally wedded wife of the petitioner, and entitled to maintenance also. There is no justification to reduce the amount of maintenance on account of retirement of the petitioner

from service, since over the years price index has increased manifold and value of the said amount of ₹40,000 is not the same today. Also, it cannot be lost sight of that the respondent has no source of income after retirement, while the petitioner is still earning.

11. Keeping in view these facts, this Court is not inclined to interfere with the impugned judgment.

12. The petition, accordingly, stands dismissed.

13. Pending miscellaneous application(s), if any, stand disposed of, as having been rendered infructuous.

(Tribhuvan Dahiya)
Judge

May 24, 2023
payal

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No